

HEALTH INSURANCE RIGHT TO SHOP AMENDMENTS

2018 GENERAL SESSION

STATE OF UTAH

LONG TITLE**General Description:**

This bill amends provisions regarding the development of a program to reward enrollees for selecting high-quality and low-cost health care providers.

Highlighted Provisions:

This bill:

- defines terms;
- amends the inducements provisions of the Insurance Code;
- permits a health insurer to develop and implement a savings reward program for enrollees; and
- requires the Public Employees' Benefit and Insurance Program to implement a savings reward program.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

31A-23a-402.5, as last amended by Laws of Utah 2015, Chapters 145 and 244

ENACTS:

31A-22-647, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **31A-22-647** is enacted to read:

31A-22-647. Insurer shared savings program.

(1) As used in this section:

(a) "Insurer" means a person who offers health care insurance, including a health maintenance organization as that term is defined in Section 31A-8-101.

(b) "PEHP" means the Public Employees' Benefit and Insurance Program created in Section 49-20-103.

(c) "Savings reward program" means a program to reward a health insurance enrollee if the enrollee receives services:

(i) covered by the enrollee's health plan; and

(ii) from a provider whose costs for services are lower than the average costs for the services.

(2) An insurer may, in accordance with Subsection (4), establish a savings reward program for a health benefit plan that is:

(a) offered by the insurer; and

(b) entered into or renewed on or after January 1, 2019.

(3) PEHP shall, in accordance with Subsection (4), establish a savings reward program for a health plan that is:

(a) offered to state employees under Title 49, Chapter 20, Public Employees' Benefit and Insurance Program Act; and

(b) entered into or renewed on or after July 1, 2019.

(4) A savings reward program described in Subsection (2) or (3) may include, in accordance with federal and state law, rewards to the enrollee through:

(a) premium discounts;

(b) rebates;

(c) reduction of out-of-pocket costs; or

(d) other rewards or incentives developed by the insurer.

Section 2. Section **31A-23a-402.5** is amended to read:

31A-23a-402.5. Inducements.

(1) (a) Except as provided in Subsection (2), a producer, consultant, or other licensee under this title, or an officer or employee of a licensee, may not induce a person to enter into, continue, or terminate an insurance contract by offering a benefit that is not:

(i) specified in the insurance contract; or

(ii) directly related to the insurance contract.

(b) An insurer may not make or knowingly allow an agreement of insurance that is not clearly expressed in the insurance contract to be issued or renewed.

(c) A licensee under this title may not absorb the tax under Section 31A-3-301.

(2) This section does not apply to a title insurer, an individual title insurance producer, or agency title insurance producer, or an officer or employee of a title insurer, an individual title insurance producer, or an agency title insurance producer.

(3) Items not prohibited by Subsection (1) include an insurer:

(a) reducing premiums because of expense savings;

(b) providing to a policyholder or insured one or more incentives, as defined by the commissioner by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to participate in a program or activity designed to reduce claims or claim expenses, including:

(i) a premium discount offered to a small or large employer group based on a wellness program if:

(A) the premium discount for the employer group does not exceed 20% of the group premium; and

(B) the premium discount based on the wellness program is offered uniformly by the insurer to all employer groups in the large or small group market;

(ii) a premium discount offered to employees of a small or large employer group in an amount that does not exceed federal limits on wellness program incentives; ~~[or]~~

(iii) a combination of premium discounts offered to the employer group and the employees of an employer group, based on a wellness program, if:

(A) the premium discounts for the employer group comply with Subsection (3)(b)(i); and

(B) the premium discounts for the employees of an employer group comply with Subsection (3)(b)(ii); or

(iv) rewards or incentives for employees of an employer group, if the rewards or incentives are for a savings reward program described in Section 31A-22-647; or

(c) receiving premiums under an installment payment plan.

(4) Items not prohibited by Subsection (1) include a producer, consultant, or other licensee, or an officer or employee of a licensee, either directly or through a third party:

(a) engaging in a usual kind of social courtesy if receipt of the social courtesy is not conditioned on a quote or the purchase of a particular insurance product;

(b) extending credit on a premium to the insured:

(i) without interest, for no more than 90 days from the effective date of the insurance contract;

(ii) for interest that is not less than the legal rate under Section 15-1-1, on the unpaid balance after the time period described in Subsection (4)(b)(i); and

(iii) except that an installment or payroll deduction payment of premiums on an insurance contract issued under an insurer's mass marketing program is not considered an extension of credit for purposes of this Subsection (4)(b);

(c) preparing or conducting a survey that:

(i) is directly related to an accident and health insurance policy purchased from the licensee; or

(ii) is used by the licensee to assess the benefit needs and preferences of insureds, employers, or employees directly related to an insurance product sold by the licensee;

(d) providing limited human resource services that are directly related to an insurance product sold by the licensee, including:

(i) answering questions directly related to:

(A) an employee benefit offering or administration, if the insurance product purchased from the licensee is accident and health insurance or health insurance; and

(B) employment practices liability, if the insurance product offered by or purchased from the licensee is property or casualty insurance; and

(ii) providing limited human resource compliance training and education directly pertaining to an insurance product purchased from the licensee;

(e) providing the following types of information or guidance:

(i) providing guidance directly related to compliance with federal and state laws for an insurance product purchased from the licensee;

(ii) providing a workshop or seminar addressing an insurance issue that is directly related to an insurance product purchased from the licensee; or

(iii) providing information regarding:

(A) employee benefit issues;

(B) directly related insurance regulatory and legislative updates; or

(C) similar education about an insurance product sold by the licensee and how the

126 insurance product interacts with tax law;

127 (f) preparing or providing a form that is directly related to an insurance product

128 purchased from, or offered by, the licensee;

129 (g) preparing or providing documents directly related to a premium only cafeteria plan

130 within the meaning of Section 125, Internal Revenue Code, or a flexible spending account, but

131 not providing ongoing administration of a flexible spending account;

132 (h) providing enrollment and billing assistance, including:

133 (i) providing benefit statements or new hire insurance benefits packages; and

134 (ii) providing technology services such as an electronic enrollment platform or

135 application system;

136 (i) communicating coverages in writing and in consultation with the insured and

137 employees;

138 (j) providing employee communication materials and notifications directly related to an

139 insurance product purchased from a licensee;

140 (k) providing claims management and resolution to the extent permitted under the

141 licensee's license;

142 (l) providing underwriting or actuarial analysis or services;

143 (m) negotiating with an insurer regarding the placement and pricing of an insurance

144 product;

145 (n) recommending placement and coverage options;

146 (o) providing a health fair or providing assistance or advice on establishing or

147 operating a wellness program, but not providing any payment for or direct operation of the

148 wellness program;

149 (p) providing COBRA and Utah mini-COBRA administration, consultations, and other

150 services directly related to an insurance product purchased from the licensee;

151 (q) assisting with a summary plan description, including providing a summary plan

152 description wraparound;

153 (r) providing information necessary for the preparation of documents directly related to

154 the Employee Retirement Income Security Act of 1974, 29 U.S.C. Sec. 1001, et seq., as

155 amended;

156 (s) providing information or services directly related to the Health Insurance Portability

and Accountability Act of 1996, Pub. L. 104-191, 110 Stat. 1936, as amended, such as services directly related to health care access, portability, and renewability when offered in connection with accident and health insurance sold by a licensee;

(t) sending proof of coverage to a third party with a legitimate interest in coverage;

(u) providing information in a form approved by the commissioner and directly related to determining whether an insurance product sold by the licensee meets the requirements of a third party contract that requires or references insurance coverage;

(v) facilitating risk management services directly related to property and casualty insurance products sold or offered for sale by the licensee, including:

(i) risk management;

(ii) claims and loss control services;

(iii) risk assessment consulting, including analysis of:

(A) employer's job descriptions; or

(B) employer's safety procedures or manuals; and

(iv) providing information and training on best practices;

(w) otherwise providing services that are legitimately part of servicing an insurance product purchased from a licensee; and

(x) providing other directly related services approved by the department.

(5) An inducement prohibited under Subsection (1) includes a producer, consultant, or other licensee, or an officer or employee of a licensee:

(a) (i) except as permitted under Section 31A-22-647, providing a rebate, reward, or incentive;

(ii) paying the salary of an employee of a person who purchases an insurance product from the licensee; or

(iii) if the licensee is an insurer, or a third party administrator who contracts with an insurer, paying the salary for an onsite staff member to perform an act prohibited under Subsection (5)(b)(xii); or

(b) except as provided in Subsection (10), engaging in one or more of the following, unless a fee is paid in accordance with Subsection (8):

(i) performing background checks of prospective employees;

(ii) providing legal services by a person licensed to practice law;

- 188 (iii) performing drug testing that is directly related to an insurance product purchased
189 from the licensee;
- 190 (iv) preparing employer or employee handbooks, except that a licensee may:
- 191 (A) provide information for a medical benefit section of an employee handbook;
- 192 (B) provide information for the section of an employee handbook directly related to an
193 employment practices liability insurance product purchased from the licensee; or
- 194 (C) prepare or print an employee benefit enrollment guide;
- 195 (v) providing job descriptions, postings, and applications for a person;
- 196 (vi) providing payroll services;
- 197 (vii) providing performance reviews or performance review training;
- 198 (viii) providing union advice;
- 199 (ix) providing accounting services;
- 200 (x) providing data analysis information technology programs, except as provided in
201 Subsection (4)(h)(ii);
- 202 (xi) providing administration of health reimbursement accounts or health savings
203 accounts; or
- 204 (xii) if the licensee is an insurer, or a third party administrator who contracts with an
205 insurer, the insurer issuing an insurance policy that lists in the insurance policy one or more of
206 the following prohibited benefits:
- 207 (A) performing background checks of prospective employees;
- 208 (B) providing legal services by a person licensed to practice law;
- 209 (C) performing drug testing that is directly related to an insurance product purchased
210 from the insurer;
- 211 (D) preparing employer or employee handbooks;
- 212 (E) providing job descriptions postings, and applications;
- 213 (F) providing payroll services;
- 214 (G) providing performance reviews or performance review training;
- 215 (H) providing union advice;
- 216 (I) providing accounting services;
- 217 (J) providing discrimination testing; or
- 218 (K) providing data analysis information technology programs.

(6) A producer, consultant, or other licensee or an officer or employee of a licensee shall itemize and bill separately from any other insurance product or service offered or provided under Subsection (5)(b).

(7) (a) A de minimis gift or meal not to exceed a fair market value of \$100 for each individual receiving the gift or meal is presumed to be a social courtesy not conditioned on a quote or purchase of a particular insurance product for purposes of Subsection (4)(a).

(b) Notwithstanding Subsection (4)(a), a de minimis gift or meal not to exceed \$10 may be conditioned on receipt of a quote of a particular insurance product.

(8) If as provided under Subsection (5)(b) a producer, consultant, or other licensee is paid a fee to provide an item listed in Subsection (5)(b), the licensee shall comply with Subsection 31A-23a-501(2) in charging the fee, except that the fee paid for the item shall equal or exceed the fair market value of the item.

(9) For purposes of this section, "fair market value" means what a knowledgeable, willing, and unpressured buyer would pay for a product or service to a knowledgeable, willing, and unpressured seller in the open market without any connection to other goods, services, including insurance services, or contracts, including insurance contracts, sold by the producer, consultant, or other licensee, or an officer or employee of the licensee.

(10) Notwithstanding any other provision of this section, a producer, consultant, or other licensee, or an officer or employee of a licensee, may offer, make available, or provide goods or services, whether or not the goods or services are directly related to an insurance contract, for free or for less than fair market value if:

(a) the goods or services are available on the same terms to the general public;

(b) receipt of the goods or services is not contingent upon the immediate or future purchase, continuation, or termination of an insurance product or receipt of a quote for an insurance product; and

(c) the producer, consultant, or other licensee, or an officer or an employee of a licensee, does not retroactively charge for the goods or services based on an event subsequent to receipt of the goods or services.

(11) (a) A producer, consultant, or other licensee, or an officer or employee of a licensee, that provides or offers goods or services that are not described in Subsection (3) or (4) for free or less than fair market value shall conspicuously disclose to the recipient before the

250 purchase of insurance, receipt of a quote for insurance, or designation of an agent of record,
251 that receipt of the goods or services is not contingent on the purchase, continuation, or
252 termination of an insurance product or receiving a quote for an insurance product.

253 (b) A producer, consultant, or other licensee, or an officer or employee of the licensee,
254 may comply with this Subsection (11) by an oral or written disclosure.

Legislative Review Note
Office of Legislative Research and General Counsel